SEP 28 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 468

ORISTILE GROS,

Petitioner,

vs.

STATE OF LOUISIANA

PETITION FOR WRIT OF CERTIORARI

To the Supreme Court of the United States:

Your petitioner, Oristile Gros, respectfully alleges:

A

Summary Statement of the Matter Involved

Petitioner is now under sentence by the court to serve from 6 to 18 months at hard labor, in the penitentiary, for the alleged crime of shooting another with intent to kill; that his conviction took place in the Parish of Assumption, Louisiana, before Judge Henry L. Himel and a jury of 5. An appeal was taken from that conviction and sentence to the Supreme Court of Louisiana, which is the court of last resort of the State; and petitioner was released on bond.

That the conviction and sentence were affirmed on appeal, on July 5, 1945. A timely application for rehearing was filed, which was considered by the court, and which was refused by the said Supreme Court on June 29, 1945.

B

Reasons Relied On for the Allowance of the Writ

In the trial before the lower court, the judge thereof designated the crime that petitioner is alleged to have committed as being a given section number of the Code of Criminal Procedure; and recalling and avoiding that statement, another statement was substituted to the effect that it was the old Code of Criminal Procedure; and in considering the point on appeal, the Supreme Court said that the statute should be designated as Dart's Code of Criminal Procedure; but there are no such books of law, with such designations in the State, other than books of private authors. *State* v. *Curry*, 174 La. 287, and *State* v. *Antoine*, 189 La. 619 prohibit such references, as supplying a fact necessary to constitute the crime and conviction, and which violates Amendments 5 and 14 of the United States Constitution as being not due process.

That the statute defines the weapon, the use of which is prohibited, as being a dangerous weapon, which designation is an indispensable ingredient of the crime, which the lower court and the Supreme Court erroneously hold may be dispensed with in this case, if the weapon actually used was a gun, which is a violation of the equal protection clause of Amendment 14 of the United States Constitution.

That the lower court having sentenced petitioner, under a former erroneous conviction for the same alleged crime, to the determinate period of 15 months, and upon petitioner's complaint, resentenced him to the indeterminate period of from 6 to 18 months, the former sentence consti-

tutes a forgiveness limitation, which cannot be exceeded, wherein the second sentence cannot exceed 15 months, and which constitutes unusual punishment under Amendment 8 of the United States Constitution.

C

Stay of Execution

Petitioner is entitled to the issuance of a stay of execution by this court, directed to Aubert L. Talbot, District Attorney, Napoleonville, Louisiana.

Wherefore your petitioner prays that this court issue a writ of certiorari to review the judgment of the Supreme Court of Louisiana for the conviction of your petitioner; and that a stay of execution issue. All of which is respectfully submitted this 21st day of September, 1945.

EMMET ALPHA,
CLEVELAND A. BLANCHARD,
Counsel for Petitioner.